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DECISION



Peter Iannicelli
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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-190856

DATE: January 4, 1978

MATTER OF: Angler's Company, Ltd.

DIGEST:

1. Question of whether bidder is regular dealer under Walsh-Healey Act is for determination by contracting agency subject to review by Secretary of Labor and will not be reviewed by GAO.
2. Protest based on contention that low bidder is not financially responsible and is incapable of supplying required goods is dismissed since it concerns challenge to agency's affirmative determination of responsibility which is not matter for review by GAO except in circumstances not present here.

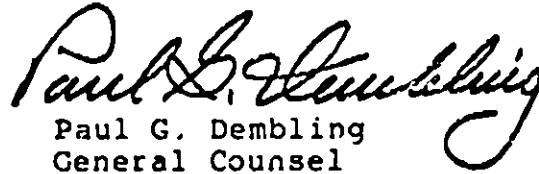
Angler's Company, Ltd. (Angler's), protests the anticipated award of a contract for the procurement of plastic portfolios to the apparent low bidder, Indian-Made Products Company, Inc. (Indian-Made), under General Services Administration (GSA) solicitation No. FP00-EM-82584-A. Angler's contends that Indian-Made is ineligible for award under provisions of the Walsh-Healey Public Contracts Act because Indian-Made is not a dealer in plastic portfolios. Angler's also questions whether Indian-Made is financially responsible or capable of supplying the required goods.

The question of whether a bidder is a manufacturer or regular dealer is for consideration under the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1970). The responsibility for such determination rests in the first instance with the contracting agency and is subject to final review by the Secretary of Labor. Thus, our Office does not review determinations of whether a particular firm is a regular dealer or manufacturer within the purview of the Walsh-Healey Act and related implementing regulations. Acme Plastics, Inc., B-189018, June 8, 1977, 77-1 CPD 415; CNC Company, B-188176, B-188441, March 29, 1977, 77-1 CPD 221.

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Moreover, this Office does not review protests of affirmative determinations of responsibility, unless fraud is alleged on the part of the contracting officer or the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365, affirmed 54 Comp. Gen. 715 (1975), 75-1 CPD 138. While we do consider protests involving negative determinations of a protester's responsibility in order to provide assurance against the arbitrary rejection of bids, affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of the procuring officials who must suffer any difficulties resulting by reason of a contractor's inability to perform. Here there is no allegation that the responsibility determination was the result of fraud or that definitive criteria have not been applied.

Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel